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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1900.

No. 347.

BOSWELL M. BLYTHE, PLAINTIFF IN ERROR,

vs.

FLORENCE HINCKLEY.

IN ERROR TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

FILED JULY 16, 1900.

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a Original.

S. F. No. 1548.

In the Supreme Court of the State of California.

BOSWELL M. BLYTHE, Plaintiff and Appellant,
vs.
FLORENCE HINCKLEY, Defendant and Respondent.

Transcript on Appeal.

S. W. & E. B. Holladay, attorneys for appellant.
L. D. McKisick, counsel for appellant.
Wm. H. H. Hart, attorney — defendant.
Garber, Boalt & Bishop, W. W. Foote, Aylett R. Cotton, of counsel for respondent.

Filed this 5 day of July, A. D. 1898.

T. H. WARD, *Clerk*,
By R. A. MARSHALL,
Deputy Clerk.

1 In the Supreme Court of the State of California.

In the Superior Court of the City and County of San Francisco, State of California.

BOSWELL M. BLYTHE, Plaintiff,
vs.
FLORENCE HINCKLEY, Defendant. } No. 63019.

Complaint.

Boswell M. Blythe, the above-named plaintiff, complains of Florence Hinckley, the above-named defendant, and for cause of action states and alleges:

2 I.

The late Thomas H. Blythe at the time of his death was a naturalized citizen of the United States, residing and having his home in the city and county of San Francisco, State of California. He died intestate, on or about the 4th day of April, 1883, leaving considerable personal property and a large and valuable estate in real property. He was never married, and left surviving him no father, no mother, no wife, no legitimate child. James T. Blythe, who was a native-born citizen of the United States when the said Thomas H. Blythe died, and who was the ancestor, and, in fact, the father of this plaintiff, was one of the next of kin living at the time of the death of said Thomas H. Blythe, and was one of his heirs-at-law, and as such heir-at-law entitled to inherit, and, in fact, did inherit the real estate of said Thomas H. Blythe.

The said James T. Blythe, in his lifetime, was, by inheritance as one of the heirs-at-law of said Thomas H. Blythe, the owner in fee and seized of an undivided interest as tenant in common with his coheirs, of all of the real estate of which the said Thomas H. Blythe died seized; that the said James T. Blythe, the said ancestor
3 and father of this plaintiff, departed this life since the death of said Thomas H. Blythe; that plaintiff has succeeded to, and is now the owner in fee and seized of the said undivided interest in the said real estate which was vested in his said father, James T. Blythe.

At and before the time of his death, the said Thomas H. Blythe was the owner in fee and seized and possessed of all of that parcel of real property situated in the city and county of San Francisco, State of California, and bounded and described as follows, to wit:

Beginning at a point on the southerly line of Geary street, distant 30 feet and 5 inches westerly from the westerly line of Kearny street; thence southerly on a line at right angles to the said southerly line of Geary street 50 feet and $\frac{3}{4}$ of one inch, more or less, to the northwesterly line of Market street; thence southwesterly along the said northwesterly line of Market street 384 feet and 10 and $\frac{7}{8}$ inches, more or less, to the northerly line of O'Farrell street; thence westerly along the said northerly line of O'Farrell street 40 feet and 1 and $\frac{1}{2}$ inches, more or less, to the easterly line of Dupont street; thence northerly along the said easterly line of Dupont
4 street 205 feet; thence at right angles easterly 60 feet; thence at right angles northerly 20 feet; thence at right angles westerly 20 feet; thence at right angles northerly 50 feet to the said southerly line of Geary street; thence easterly along the said southerly line of Geary street 135 feet and 6 inches; thence at right angles southerly 74 feet and 6 inches; thence at right angles westerly 30 feet; thence at right angles southerly 3 feet; thence at right angles easterly 50 feet and 6 inches; thence at right angles northerly 77 feet and 6 inches to the said southerly line of Geary street, and thence easterly along the said southerly line of Geary street 156 feet and 6 inches, more or less, to the point of beginning; being a portion of the block of land bounded by Kearny, Market, Dupont (Grant avenue) and Geary street, all in the city and county of San Francisco, State of California.

The above-described real property was at the time of the death of said Thomas H. Blythe, and has ever since been, and now is, of the value of $3,000,000 and upwards.

Plaintiff is now the owner in fee and seized of an undivided interest in and to said above-described real property, and the whole thereof.

5 II.

The defendant, Florence Hinckley, claims to be the owner in fee and seized of said above-described real property, and of the whole thereof, which said claim conflicts with that of this plaintiff.

Plaintiff states and alleges that the said claim of said Florence to

said real estate grows out of, and is based solely upon the following facts and circumstances, and none other, namely:

The said Florence was born in England in the year 1873, and is the illegitimate child of a woman who was then named Julia Perry, who had never been married to any man before the birth of said Florence, and who was a native of England, and who had never, before the birth of said Florence, been out of England, and who was, and whose child the said Florence at her birth was, native-born subjects of Victoria, Queen of Great Britain and Ireland. That said Florence and her said mother continuously remained in, and continued to live and have their home in England, and were at all times aliens to the United States, until after the death of said Thomas H. Blythe, and descent of his real property cast upon the father of this plaintiff. That said Florence, as such illegitimate alien-
born child, as hereinabove stated, had no inheritable blood
6 in her veins when she was born, nor when the said Thomas
H. Blythe died, and she was, therefore, incapable, by the law of nations, the common law of England and of the State of California, the Constitution of the United States, particularly section 10 of article I thereof, and the 14th amendment thereto, and section 1978 of the Revised Statutes of the United States, of inheriting said above-described real property, or any part thereof, or interest thereto or therein, to the exclusion of plaintiff's said father or at all.

Plaintiff further states that in the year 1883, and after the death of the said Thomas H. Blythe, and after the title and ownership in fee of said real property had vested in the said James T. Blythe and his coheirs, one James Crisp Perry, who was then an alien and a subject of Queen Victoria, brought the said Florence, who had, prior thereto, never been out of England, to the United States and direct to the city and county of San Francisco from her home in London, England. The said Florence was then, to wit: in 1883, an infant alien, and ineligible to become a naturalized citizen of the United States. She was, in fact, by the common law of England,
and by the common law then in force in the State of Cali-
7 fornia, *filia nullia*, no man's daughter, no man's heir, and
incapable of succeeding to the ownership of the above real property by inheritance from Thomas H. Blythe.

That there was not at the time of the birth of said Florence, nor at any time thereafter, any treaty in force between the United States and Great Britain under or by the terms and provisions of which the said Florence, or her mother could inherit real property situated in the State of California, or in any other State in the Union.

That said Florence, after she came to the United States and to the State of California, set up a false and unfounded claim to the said real estate, falsely pretending and falsely claiming that she had been adopted by the said Thomas H. Blythe as his daughter in his lifetime, when and while said Blythe was in California, under the provisions of section 230 of the Civil Code of California, or that he had instituted her as his heir under the provisions of section 1387 of said code.

Plaintiff states and alleges that there was not at any time during

the life of said Thomas H. Blythe, any law in force in England under or by the force of which the said Blythe could have
8 adopted, legitimated or made the said Florence his daughter or his heir, or capable of inheriting real estate in the State of California; nor was there at any time during the life of said Blythe any law in force in England under or by the force of which he could have done any act or thing in the State of California by which he could have released or absolved the said Florence of and from her allegiance to her sovereign, Queen Victoria, or changed her status from that of a subject of the British crown to that of a citizen of the United States, or infused inheritable blood into her veins. Nor was there any such valid law in force in the State of California.

III.

The plaintiff further states and alleges that after said Florence came to America in the year 1883, the same James Crisp Perry, who brought said Florence to America, and who was then and there an alien and subject of the Queen of Great Britain and Ireland, was, without authority of law, appointed by the superior court of the city and county of San Francisco, guardian of the person and estate of said Florence, and thereafter, namely, after the 18th day of March, 1885, as such guardian, the said James Crisp Perry,
9 without authority of law, commenced a special proceeding in said superior court in the name of said Florence under the provisions of an act of the legislature of the State of California, which is now section 1664 of the Code of Civil Procedure of the State of California, and applicable only to citizens of the United States, which said special proceeding was for the purpose of having the said court ascertain, adjudge and determine the claim of said Florence to the heirship of said Thomas H. Blythe, and her claim to the ownership of his estate, and in substance that she, said Florence, was the daughter and sole heir of said Thomas H. Blythe under and by virtue of sections 230 and 1387 of the Civil Code of California, or under or by virtue of one or the other of said sections; and by virtue thereof to have the said court adjudge and decree that said Florence was the sole heir-at-law of the said Thomas H. Blythe, and entitled to inherit his real estate as well as to succeed to his personal estate.

Said special proceeding was commenced by filing a petition in the matter of said estate, for and in the name of said Florence, which was followed by a complaint also filed therein for and in the name of said Florence.

10 In both said petition and said complaint, in order to persuade and enable the said superior court to take jurisdiction of her person and her claim, certain facts appertaining to her claim were fraudulently and designedly suppressed, viz: That said Florence was born in England, the illegitimate child of Julia Perry, and that she was at all times until after descent cast, a British subject, residing and remaining in England; which facts had they not been so suppressed would have shown that she could not take said real estate by descent, or be made an heir, or made legitimate in the

absence of a treaty between the United States and Great Britain, enabling her so to do.

Said special proceeding was commenced in said court by the said Florence as sole petitioner, and thereafter such proceedings were had in said court in said special proceeding that it was for the first time made therein to appear plainly to the court, by evidence only as the fact was and is, that said Florence was and is an illegitimate child, that she was born out of wedlock in England, that the said Thomas H. Blythe never saw her in his lifetime, that neither she, nor her alleged mother, nor the father, nor the mother of the alleged
11 mother of Florence had ever been within the United States until after the death of said Blythe; that they were, in fact, all aliens, and ineligible to become citizens of the United States until after the death of Thomas H. Blythe.

And in that behalf plaintiff states and alleges, upon the advice of his counsel, and upon his information and belief, that when it was so made plainly to appear to the court as the fact was that the said Florence had been at all times during the life of said Thomas H. Blythe, a non-resident alien subject of the Queen of Great Britain and Ireland, and has never been within the United States, nor a *bona fide* resident within the United States, nor of the State of California, until after the death of said Thomas H. Blythe, and descent cast, and that she had no inheritable blood, and was not and could not be made his heir-at-law, it was the duty of the said court to dismiss the said petition and claim of the said Florence, in so far as the title and descent of the above-described real estate to her were involved in said special proceeding, for want of jurisdiction in the court to adjudge or decree that she was heir to the said real estate, or capable of taking the same by descent.

Plaintiff states that, nevertheless, the said superior court assumed jurisdiction over said Florence and over the said subject-
12 matter, to wit: said real estate, and proceeded to hear and determine the matters, in the said petition and subsequently filed complaint of said Florence, and in substance and effect determined and adjudged that the said Thomas H. Blythe in his lifetime had adopted the said Florence as his daughter under and by virtue of the provisions of said section 230 of said Civil Code, or had instituted her as his heir under and by virtue of the provisions of section 1387 of said code, notwithstanding the fact that the said Thomas H. Blythe was never in England after the birth of said Florence, nor was she ever in the United States until after his death.

And in that behalf plaintiff states and alleges the fact to be that, although it was plainly so made to appear to the court that said Florence was an alien-born illegitimate child, a British subject, who had at all times prior to the death of said Thomas H. Blythe, been in England, and a minor, who was ineligible to become a citizen of the United States under the naturalization laws thereof, the said superior court, in giving its decision in favor of said Florence, and against said Abbie Ayres, James T. Blythe and others, confined its decision to three questions:

13 First, whether said Florence was the child of said Thomas H. Blythe? Second, whether or not the said Thomas H. Blythe in his lifetime had adopted and legitimated said Florence under and by virtue of section 230 of the Civil Code of California? Third, whether or not said Thomas H. Blythe had in his lifetime instituted the said Florence as his heir under the provisions of section 1387 of said Civil Code? All of which questions, and no other, said superior court decided in the affirmative and in favor of said Florence; and the plaintiff, upon his information and belief, states that said decision did not determine the question of heirship, title or interest in or to the said real estate of the said Thomas H. Blythe, in California, for want of jurisdiction in said court to determine that said Florence was or could be an heir to the real estate of said Thomas H. Blythe in California, or capable of inheriting the same in the absence of a treaty then in force between the United States and the United Kingdom of Great Britain and Ireland, therein giving to the said Florence the right to inherit the real estate of said Thomas H. Blythe. And in that behalf plaintiff states that the legislature of the State of California had no power or authority to enact, nor did it en-

14 act, any law which would, or was intended to, operate upon persons or things beyond the territorial limits of the United States, or under or by virtue of which a citizen of the United States could do any act or thing by which an illegitimate, unnaturalized alien child could be made capable of inheriting real estate of an intestate, who during all the time said acts and things were claimed to have been done, was living in the State of California, and who died in said State, nor did said section 230 nor section 1387 so operate. Nor did any court of the State of California have jurisdiction to extend and make operative any law of the State of California beyond the territorial limits of the United States. Yet said court did, without jurisdiction, decree said Florence to be the owner of said real estate by succession.

Plaintiff farther states that from said judgment of said superior court an appeal was taken to the supreme court of the State of California, when all the matters and things hereinbefore stated, touching and concerning the said Florence and Thomas H. Blythe, were made plainly to appear to said supreme court in the record on said appeal, and therein showing that neither the said superior court nor said supreme court had jurisdiction to decide the matter in con-

15 troversy involving the title and ownership to said real estate in said special proceeding in favor of the said Florence, nevertheless the said supreme court, without jurisdiction so to do, by a bare majority of the judges who heard said appeal on said special proceeding, and participated in the decision thereof, affirmed the judgment of said superior court upon the ground that the said Thomas H. Blythe had instituted said Florence as his heir under said section 1387, though he had not adopted her under said section 230.

Neither the said superior court nor said supreme court decided or determined the question whether sections 671 and 672 of the Civil Code of California, as applied to the claim of said Florence, to take

said real estate in California by descent, were or were not in violation of section 10 of article I of the Constitution of the United States; nor whether said Florence could take said real estate by descent, in the absence of a treaty between the United States and Great Britain, enabling her to take said real estate; nor whether said courts were or were not without jurisdiction to adjudge said real estate to said Florence upon her said claim as the heir of
16 said Thomas H. Blythe, in the absence of a treaty between the United States and Great Britain, enabling her to take said real estate by succession; nor whether any statute passed by the State of California, purporting to enable a non-resident, illegitimate alien British subject, such as said Florence, to take real estate by succession, is not in violation of, and repugnant to section 10 of article I of the Constitution of the United States. And in that behalf plaintiff states and alleges that said decision of said supreme court is null and void for want of jurisdiction in said court to decide that said Thomas H. Blythe could, under said section 1387, or under any law of the State of California, infuse inheritable blood into the veins of a non-resident illegitimate alien who at all times after her birth and during the lifetime of said Thomas H. Blythe had her home and allegiance only in England and continuously resided outside of and beyond the territorial limits of the United States and of the State of California until after the death of said Thomas H. Blythe and descent cast. Nor could the said Florence consent thereto, or take any such heirship upon herself, she being then an infant and incapable of so doing.

Plaintiff further states that said decision of said su-
17 perior and supreme courts was made in a proceeding entitled Florence Blythe *vs.* Abbie Ayres *et als.*, and is reported in 96 California Reports at page 532 *et seq.*, to which reference is here made. And in that behalf this court will see upon an examination thereof that said supreme court in deciding in favor of said Florence overruled former decisions made by said court construing statutes of the State of California, which said section 230 and 1387 of said Civil Code were mere continuations of said statutes by virtue of section 5 of said Civil Code, which said former decisions, so overruled by said decision in Blythe *vs.* Ayres, had established a rule of property in the State of California, which rule of property was in force in said State when the said Thomas H. Blythe died, and under and by virtue of which the next of kin of said Thomas H. Blythe, including the said James T. Blythe, inherited the real estate of the said Blythe long before the said supreme court made its decision in said proceeding of Blythe *vs.* Ayres in and by which said decision said court attempted to divest and destroy the title and interest in said above-described real estate which had vested in said James T. Blythe *eo instanti*, the death of said Thomas H. Blythe. And in that
18 behalf plaintiff states that said decision of said supreme court was and is absolutely null and void for want of jurisdiction in said court to make the same.

Plaintiff further states and alleges that the said special proceeding which terminated in said decision of said supreme court in Blythe

vs. Ayres, hereinbefore mentioned and referred to, was commenced in said superior court October 1, 1885, by said Florence, and was conducted throughout under the provisions of the act of the legislature of the State of California, approved March 18, 1885, and which was then and now is section 1664 of the Code of Civil Procedure of said State. Plaintiff further states and alleges that the legislature of the State of California passed another act, which was approved March 8, 1889, which ever since it was passed has been and is now section 1663 of said Code of Civil Procedure, in and by the first provision of said section it was enacted among other things as follows, namely:

"At any time after the lapse of one year from the issuance of letters testamentary or of administration, any heir, devisee, or legatee may present his or her petition to the court for distribution of the
19 net proceeds of the share of said estate to which he or she will be entitled. Notice of the application must be given as required by section sixteen hundred and fifty-nine. The executor or administrator, or any other person interested in the estate, may appear at the time named and resist the application, or any other heir, devisee, or legatee may make a similar application for himself." Plaintiff further states and alleges that after the said section 1663 became a law, namely, on June 18, 1894, the said Florence did, under the provisions of said section 1663, present her petition to said superior court of the city and county of San Francisco, wherein the administration of the estate of said Thomas H. Blythe was then pending, to have distributed to her the net proceeds of the share of said estate to which she, without right thereto, claimed to be entitled, to wit: the whole of said estate, real and personal. Plaintiff, in that behalf, states that the said petition of said Florence for distribution so presented to said court was an original, independent, special proceeding, and her said claim to said estate so therein set up was based solely upon the record of the proceedings and judgment had and made by said superior and supreme courts in the said
20 proceedings of Blythe *vs.* Ayres, hereinbefore referred to, and upon no other claim or right whatever. Plaintiff states that in due time the said James T. Blythe, who was then and there a person interested in said estate, namely, one of the next of kin and lawful heir of said Thomas H. Blythe, appeared in said last-mentioned proceedings under and by virtue of the right given to him so to do in said section 1663, and did then and there resist the application of said Florence to have distributed to her any part or share of said estate, and in that behalf plaintiff states that it was made plainly to appear to said court upon the face of the said petition of said Florence that the said Thomas H. Blythe was at and before his death, namely, on and ever after August 31, 1855, a naturalized citizen of the United States; that Florence was born in England on December 18, 1873, and was the illegitimate child of one Julia Perry, then an unmarried woman; that the said Thomas H. Blythe was never in England, nor in any other country in Europe, after August 29, 1873, nor was the said mother of said Florence, nor said Florence ever out of England, or within any part of the United States, or

on the continent of America, until after the death of said Thomas H. Blythe and descent cast. And it was further made plainly to appear to said court that the said Florence
21 was born a subject of Victoria, Queen of Great Britain and Ireland, and always remained such subject until after the death of said Thomas H. Blythe; and that the law of the State of California, as embodied in section 230 and 1387 of the Civil Code thereof, is not and never has been the law in the United Kingdom of Great Britain and Ireland, nor has there ever been in said United Kingdom any law of adoption or any law by which an illegitimate child born and living in England could, by an acknowledgment in writing, or otherwise, be instituted as, or become the heir of any man living in or out of England, or any law by which an illegitimate child could be made legitimate or adopted as the child or heir of its putative father, all of which matters and things last alleged as appearing on the face of said petition this plaintiff alleges to be true in fact. And the plaintiff further states that the said petition and application of said Florence came on to be heard by said court and before the court, and were tried by the said court, and that upon the said hearing and trial of said proceeding all of the matters and things hereinbefore alleged appeared on the face of said petition for distribution, and the same were put in evidence by the said Florence in
22 support of her said petition to have said estate of Thomas H. Blythe distributed to her. In that behalf this plaintiff alleges that when said petition was presented to said court at the hearing thereof and said evidence was offered to be introduced by the said Florence on the said trial, it was the plain duty of said court to dismiss the said petition of said Florence in so far as the real estate of the said Thomas H. Blythe was involved for want of jurisdiction in said court to distribute to her any part or share of said real estate above described without proceeding further to hear said matter as to said real estate upon said petition.

Plaintiff further states and alleges that at the said hearing and trial of said petition the said Florence offered in evidence the entire record, including the judgments and decrees of said superior court and of said supreme court in the proceeding hereinbefore referred to as Blythe *vs.* Ayres.

Plaintiff further states and alleges that when and at the time the said Florence offered said record in evidence, the said James T. Blythe and his coheirs and tenants in common with him, who then was and were the owners of said above-described real estate,
23 objected to the introduction of said record upon several grounds, and among them the following, viz: That said record and said alleged judgment of October 22, 1890, in the matter of the proceedings of Blythe *vs.* Ayres *et als.*, and the alleged affirmance thereof by the supreme court, ought not to be received in evidence on the grounds that the said alleged judgment was and is illegal, unconstitutional and void, for the reason that said courts had no jurisdiction to render the same upon the facts there found, stated and set forth in said record and in the written decision of

said court, and as set out in the petition for distribution; that to render such a judgment upon such facts was to legislate judicially after descent cast; and thereby and by such judicial legislation to deprive the said James T. Blythe of his property without due process of law, and to deprive him of the equal protection of the law, in violation of the provisions of the Constitution of the United States, and particularly in violation of the provisions of section 10 of article I of said Constitution, and of the provisions of section 1 of article 14 of the amendment thereto; that there was not at the time of the death of said Thomas H. Blythe, to wit: April 4, 1883, nor at the time when said judgment was rendered, nor at the time of the
24 trial then before said court, any law upon the statute books, or in the codes, or decisions of the supreme court of the State, authorizing the giving of, or giving to the said court jurisdiction to give or make said alleged judgment upon the said facts. Plaintiff states that said superior court overruled the above and all other objections made by the said James T. Blythe to the introduction of said evidence by the said Florence, and the same was admitted and thereupon, on October 26, 1894, said superior court without allowing the said James T. Blythe, but refusing to allow him, to offer any evidence in the matter, either in support of his claim to said estate, or in opposition to the claim of said Florence thereto, proceeded to and did give, make and file in said matter and estate its decision in writing, purporting to be in favor of said Florence, and did adjudge that she was entitled to have said estate, and the whole thereof, including said above-described real estate, distributed to her, without jurisdiction so to do as to said real estate. And the court thereafter, on June 18, 1894, did make and cause to be entered its decree distributing the above real estate to the said Florence, and caused the possession thereof to be delivered to her.

25 Plaintiff states that thereafter, namely, after said decree purporting to distribute said real property to said Florence was given, made and entered, and within the time prescribed by law, the said James T. Blythe appealed from said decree to the supreme court of the State of California, and duly and regularly perfected his said appeal by doing all the acts prescribed by law in that behalf, and caused a record of said proceedings to be printed and filed with the clerk of said supreme court within the time prescribed by law and by the rules of said court; that by virtue of said appeal and by the law in that behalf, the said proceedings and decree of distribution were removed and transferred out of and from said superior court and into said supreme court and remained pending therein, and plaintiff states that while said appeal was so pending, and before the same was tried, and before the same was called for trial in said supreme court, and before any decision was therein given or made, namely: on June 11, 1895, the said James T. Blythe, the ancestor and father of this plaintiff, died, at his home in Downey, in the county of Los Angeles, State of California, and thereupon and thereafter this plaintiff, who was then one of
26 the heirs-at-law of said James T. Blythe, succeeded to the interest of his said father, as tenant in common with other

next of kin, of which said Florence was not one, to the real estate above described.

Plaintiff further states that neither the said Florence, nor any one else, ever suggested the death of James T. Blythe in said supreme court, nor did the said Florence, nor any one else, revive or prosecute said proceedings or said appeal of the said James T. Blythe in said supreme court, nor was the personal representative, or the heirs or devisees of said James T. Blythe ever made parties to said proceedings or to said appeal, nor did they, or any or either of them ever appear in said proceedings in said supreme court. And in that behalf plaintiff alleges that said supreme court never had jurisdiction of the said James T. Blythe, nor of his personal or real representatives, at any time after June 11, 1895, the date of the death of said James T. Blythe. Nor did it ever at any time before or after the death of said James T. Blythe have jurisdiction to affirm said decree and judgment of said superior court purporting to distribute, or purporting to order the said real estate to be distributed to said Florence. Plaintiff states that without any right, power or jurisdiction so to do, the said supreme court did afterwards hear said appeal of the other parties thereto,
27 and on November 30, 1895, make a decision purporting to affirm said illegal and void judgment and decree of said superior court, and thereafter sent its remittitur to said superior court, and thereafter, to wit, on the 4th day of December, 1895, the possession of said real estate and the whole thereof, was delivered by the court to the said Florence pursuant to said illegal and void judgment, and not otherwise, nor by any other right or claim thereto whatever. The said Florence has, ever since said 4th day of December, 1895, been and now is in possession of said real estate, and has ever since been and now is collecting the rents, issues and profits of said real estate and appropriating the same to her own use and to the use of her creditors and other persons who claim an interest in said real estate under her, and not otherwise.

Plaintiff further states and alleges, upon his information and belief, that said Florence sets up and claims that she was entitled to inherit, and did in fact inherit, the real estate of which the said Thomas H. Blythe died seized, by virtue of section 671 of the Civil Code of California, which is in the words following namely:
28 "Any person, whether citizen or alien, may take, hold and dispose of property, real and personal, within this State."

In that behalf plaintiff states that said section 671 was adopted and passed by the legislature of the State of California, March 30, 1874; that thereafter, and in the year 1879, the people of the State of California ordained a new constitution for the said State, which went into force and became the organic law of the State January 1, 1880, before the death of said Thomas H. Blythe; that in and by section 17 of article I of said new constitution it was ordained as follows, namely:

"Foreigners of the white race or of African descent eligible to become citizens of the United States under the naturalization laws thereof, while *bona fide* residents of this State, shall have the same

rights in respect to the acquisition, possession, enjoyment, transmission, and inheritance of property as native-born citizens."

And by section 22 of said article I it was ordained as follows, namely:

"The provisions of this constitution are mandatory and prohibitory unless by express words they are declared to be otherwise."

And by section 1 of article XXII of said constitution it was, among other things, ordained as follows, namely:

29 "The provisions of all laws which are inconsistent with this constitution shall cease upon the adoption thereof, except that all laws which are inconsistent with such provisions of this constitution as require legislation to enforce them shall remain in full force until the first day of July, eighteen hundred and eighty, unless sooner altered or repealed by the legislature."

And in that behalf plaintiff states that said section 671 of said Civil Code was and is an attempt on the part of the legislature of the State of California to invade and encroach upon the treaty-making power of the United States, contrary to and in violation of section 10 of article I of the Constitution of the United States.

Said section 671 is also null and void by reason of the fact that it is plainly inconsistent with section 17 of article I of said constitution of California, and that therefore said section 671 ceased to be a law of the State of California upon the adoption of said constitution.

And plaintiff further states that said Florence could not and did not inherit the real estate of said Thomas H. Blythe under the provisions of said section 17 of said article I of said constitution by reason of the facts that she was ineligible to become a citizen

30 of the United States under the naturalization laws thereof, nor was she a *bona fide* resident of the State of California when the said Thomas H. Blythe died, and his said real estate, including the real property above described, descended to his next of kin, including the said James T. Blythe.

And plaintiff further states that said section 17 of article I of the constitution of the State of California is absolutely null and void by reason of the fact that it is an attempt by the people of the State of California to invade and encroach upon the treaty-making power of the United States, contrary to and in violation of section 10 of article I of the Constitution of the United States.

Plaintiff further states, upon his information and belief, that said Florence sets up, and pretends to claim, that she had and has the right to take said above-described real estate by succession as heir of said Thomas H. Blythe under and by virtue of the provisions of section 672 of said Civil Code of California, which is in the words and figures following, namely:

"If a non-resident alien takes by succession, he must appear and claim the property within five years from the time of succes-

31 sion, or be barred. The property in such case is disposed of as provided in title VIII, part III, Code of Civil Procedure."

In that behalf plaintiff states that said section 672 is null and void by reason of the fact that it is an attempt on the part of the legislature of the State of California to invade and encroach upon

the treaty-making power of the United States, and is in conflict with and contrary to section 10 of article I of the Constitution of the United States. The said section 672 has no application to said Florence by reason of the fact that she was not at the time of her birth, nor at any time thereafter, given the right of succession to the said above-described real property by a treaty or any treaty in force between the United States and the United Kingdom of Great Britain and Ireland.

Plaintiff further states and alleges, upon his information and belief, that each and every claim, or pretended claim, or right to said real property set up and insisted upon by said Florence of a right by her to inherit, hold, possess, or enjoy said above-described real property under section 230 or under section 671, or under section 672, or under section 1387 of the Civil Code of California, or under any other law or claim of right, is groundless, fictitious, ab-
32 solutely false, unfounded in fact or in law, and without any meritorious right whatever.

Plaintiff further states and alleges that said above-described real property is situated on Market, Geary, Dupont and O'Farrell streets, in the city of San Francisco, and the same is there located in and near the heart of the business center of said city. That the same is improved, built upon, and almost entirely covered with storehouses, shops and other business houses, and the same have been ever since said Florence went into possession thereof and now are occupied by tenants of said Florence, who pay, in the aggregate, large sums of money to said Florence every month, namely: twelve thousand dollars, and that the same, in the aggregate, net to said Florence and to those who claim under her $100,000 per annum for each and every year since she has been in possession thereof.

And plaintiff further states that all of the personal estate of which the said Thomas H. Blythe died possessed was exhausted in the expenses of administering the estate of said Blythe, and that none of said personal estate ever came into the possession of the said Florence save and except a leasehold property situated on the south-
33 east corner of Geary street and Grant avenue, in said city of San Francisco, which is not sued for in this action and is expressly excepted.

Plaintiff further states and alleges that said Florence owes and is indebted to divers persons, unknown to plaintiff, in sums aggregating, as plaintiff is informed and believes, $300,000 and upwards; that she has heretofore made and entered into written contracts and agreements with her lawyers and agents and other persons, which are now in force and by which she promised and agreed to assign or convey to said lawyers, agents and other persons large and valuable interests or shares in said above-described real estate and other property of the estate of said Thomas H. Blythe; and plaintiff is informed and believes, and upon his information and belief states and alleges, that said Florence has offered to sell and convey portions of said above-described real property, and has offered and tried to settle with some of her creditors and others having valid claims against her and to pay off and discharge her liabilities to

them by conveying to them portions of said real estate, and that she has mortgaged the said real estate, or parts thereof, and bor-
34 rowed money thereon to secure the payment of her debts and liabilities. That said Florence is wholly and hopelessly insolvent, that she has no means or property whatever, nor anything of any value whatever; that all the rents and profits from said real estate heretofore received by her have been expended and totally exhausted, and the same will continue to be expended and exhausted by her as fast as the same are collected and received by her; that all those already collected and expended are and will ever remain a total loss to plaintiff and all those which will be hereafter collected by her while and as long as this action against her shall remain pending will be expended by her and will likewise be a total loss to plaintiff, to his great and irreparable damage and injury.

Plaintiff further states and alleges that unless the said Florence be restrained and enjoined by this court, or a judge thereof, from so doing, she will transfer and convey, or mortgage, or otherwise cloud the title of said real property, to divers persons, and thereby cause a multitude of claims to said property conflicting with the claim, right and title of plaintiff, and thereby compel him to resort to a multiplicity of actions against those divers persons to enforce his right to said real estate and to clear up his title thereto.

35 Wherefore, and in consideration of the premises, plaintiff prays the court as follows, namely:

I.

Plaintiff prays the court, or a judge thereof, for an order or decree appointing a receiver, and therein ordering, commanding and directing such receiver to take immediate possession of the said above-described real property and the whole thereof, and therein ordering, commanding, and directing the tenants in possession, and each and every one of them, to attorn to such receiver and to pay rent to him, and to no one else; and therein authorize and direct such receiver to collect and receive the rents from the tenants in possession at the rate they and each of them have agreed to pay for the premises occupied by them, or either, and that when any of said premises become vacant to re-rent the same to good tenants; and with such other and further authority and directions as the court may think proper.

II.

And plaintiff further prays the court, or a judge thereof, to grant and issue a restraining order and an injunction, directed to
36 the defendant, Florence Hinckley, and to her agents, employees, servants, creditors, and all other persons whomsoever who claim or pretend that they have any demands against or upon said real estate, restraining and enjoining the said Florence and the said other persons, and each and every one of them severally, from granting or receiving grants or other conveyances of or to any of said property, and from in any way encumbering the same by mortgages, attachments, or otherwise or at all, and from in any manner, shape or form interfering with the said receiver in his taking or re-

taining possession of said property and managing the same under the orders and directions of the court. And upon the trial and decision of this action that the said injunction be made perpetual.

III.

And plaintiff further prays for the judgment of the court deciding that the said conflicting claim of the said defendant Florence Hinckley is illegal, unfounded, false and without merit, and that plaintiff, as against her and her claim, is the lawful owner in fee of the said above-described real property and the rents, income and profits,
37 and the whole thereof, and that his title thereto, and estate therein be quieted. And that the said defendant be perpetually enjoined from setting up any claim whatever thereto, and to any right, title or interest therein or thereto. And that the possession, with the accumulated rents of said property in the hands of the receiver, be delivered to the plaintiff.

IV.

And plaintiff prays for all such other and further and particular relief as to the court may seem meet and proper. And the plaintiff prays for general relief.

S. W. & E. B. HOLLADAY,
Attorneys for Plaintiff.

L. D. McKISICK,
Counsel for Plaintiff.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

Boswell M. Blythe, being duly sworn, deposes and says: That he is the plaintiff named in the foregoing complaint; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated on his information or belief, and as to those matters he
38 believes it to be true.

BOSWELL M. BLYTHE.

Subscribed and sworn to before — this 15th day of February, 1898.

[SEAL.] N. E. W. SMITH,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Filed Feb. 16, 1898. C. F. Curry, clerk, by Joseph Riordan, deputy clerk.

(Title of Court and Cause.)

Demurrer to Complaint.

The defendant, Florence Blythe Hinckley, sued in this action under the name of Florence Hinckley, demurs to the complaint in the above-entitled action filed by the said plaintiff, upon the following grounds:

I.

Said complaint does not state facts sufficient to constitute a cause of action.

II.

Said complaint does not state facts sufficient to constitute a
39 cause of action, because it appears upon the face thereof and is therein stated, that in a proceeding instituted and prosecuted under section 1664 of the Code of Civil Procedure of the State of California, in the superior court of said city and county, in the name of and for said defendant, and under the complaint of said defendant filed in said proceeding, it was determined and adjudged by said court that Thomas H. Blythe, who is mentioned in said complaint, in his lifetime had adopted said defendant as his daughter under and by virtue of the provisions of section 230 of the Civil Code of the State of California, and it appears upon the face of said complaint that said proceeding was finally determined upon appeal to the supreme court of the State of California, and that said judgment has become final and continues in full force and effect, and was affirmed by said supreme court, and that thereby the title of this defendant to all of the property mentioned in the complaint in this action was finally and conclusively determined and established against James T. Blythe, mentioned in said complaint, and against the entire world, and that the said James T. Blythe thereby became estopped, and the plaintiff, as his son and heir, is estopped, from having or making any claim to any of said property described in the complaint in this action.

40 III.

Said complaint does not state facts sufficient to constitute a cause of action, because it appears upon the face thereof that under the petition of said defendant presented to said superior court under the provisions of section 1663 of the Code of Civil Procedure of the State of California, in which court the administration of the estate of said Thomas H. Blythe, deceased, was then pending, and upon the hearing and trial under said petition, and on the 26th day of October, 1894, said court gave, made and filed in said matter and estate its decision in writing in favor of said defendant, and did adjudge that she was entitled to have the whole of the said estate of said Thomas H. Blythe, deceased, distributed to her, and that said superior court, under said petition, did make and cause to be entered the decree of said court distributing the real estate described in the complaint in this action to this defendant; and it appears upon the face of the complaint herein that said judgment and decree continues in full force and effect, and has never been in anywise reversed, set aside or modified, and that by said judgment and decree the said James T. Blythe became estopped, and the said plain-
41 tiff, as his son and heir, is estopped, from having or maintaining any claim to said real estate or any part thereof.

IV.

Said complaint does not state facts sufficient to constitute a cause of action, in that it appears upon the face thereof that said defendant was instituted heir of said Thomas H. Blythe, deceased, under the provisions of sec. 1387 of the Civil Code of the State of California.

IV*a*.

Said complaint is uncertain, in that it is therein alleged that James Crisp Perry was, without authority of law, appointed by the superior court of the said city and county guardian of the person and estate of said defendant, but there is no statement in said complaint wherein said appointment was without authority of law, and said complaint is uncertain in that particular.

V.

Said complaint is uncertain, in that it is herein alleged that James Crisp Perry, without authority of law, commenced a special proceeding in said superior court, in the name of said defendant,
42 under the provisions of section 1664 of the Code of Civil Procedure of the State of California, but there is no statement in said complaint wherein the commencement of said special proceeding was without authority of law, and said complaint is uncertain in that particular.

VI.

Said complaint is ambiguous in the following particular, to wit: It is alleged in said complaint that James T. Blythe, who is therein mentioned, was the owner in fee and seized of an undivided interest of all of the real estate of which said Thomas H. Blythe died seized, and that upon the death of the said James T. Blythe said plaintiff succeeded to and is the owner in fee and seized of an undivided interest in said real estate, and yet said complaint alleges and sets forth what is in conflict with said statements by alleging that in a proceeding commenced and prosecuted in said superior court for and in the name of said defendant under section 1664 of the Code of Civil Procedure of the State of California, it was determined and adjudged by said court that said Thomas H. Blythe in his lifetime had adopted said defendant as his daughter under and by virtue of the provisions of section 230 of the Civil Code of
43 the State of California, and that said judgment was affirmed by the supreme court of the State of California, and it appears from the allegations of said complaint that the said judgment has never been in any manner reversed, set aside or modified, but continues in full force and has become final, and that thereby it has been determined and adjudged that this defendant was and is the heir of Thomas H. Blythe, deceased, and that she is the owner in fee, and has been the owner in fee, since the time of the death of said Blythe, of all of the real estate of which said Thomas H. Blythe died seized, including the real estate described in said complaint; and said complaint further alleges and sets forth what is in conflict

with the aforesaid statements therein as to the alleged ownership of James T. Blythe of an interest in said real estate, and of the alleged ownership of the plaintiff of an interest in said real estate, by stating that under the petition for distribution presented by said defendant to said superior court under section 1663 of the Code of Civil Procedure of the State of California, said court did adjudge that said defendant was entitled to have the whole of said estate of said Thomas H. Blythe, deceased, including the real estate de-
44 scribed in said complaint, distributed to her, and it appears from the statements in said complaint that said adjudication has never been in anywise reversed, set aside or modified, and the said judgment continues in full force and is conclusive of the title of said defendant in fee to all of said real estate, and that said plaintiff has no title to or interest in any of said real estate.

VII.

Said complaint is also ambiguous in the following particulars, to wit: It is therein alleged that the said superior court, in giving its decision in favor of said defendant and against Abbie Ayres, James T. Blythe, and others, confined its decision to three questions, which three questions are stated in said complaint, and it is alleged in said complaint that all of which questions, and no other, said superior court decided in the affirmative and in favor of said defendant; and it is alleged in said complaint that said decision did not determine other questions in relation to whether this defendant was or could be an heir to the real estate of said Thomas H. Blythe in California, and yet said complaint alleges and sets forth what is in conflict with said statements by alleging that in said proceeding com-
45 menced and prosecuted in said superior court for and in the name of said defendant under section 1664 of the Code of Civil Procedure of the State of California, it was determined and adjudged by said court that said Thomas H. Blythe in his lifetime had adopted said defendant as his daughter, under and by virtue of the provisions of section 230 of the Civil Code of the State of California, and it thus appears from the statements of said complaint that all questions relating to the proposition whether said Blythe had adopted said defendant as his daughter under said section were involved and included in said adjudication made by said court that said defendant had been thus adopted by said Blythe, and that all of said questions were finally determined and concluded by said adjudication of said court.

VIII.

Said complaint is also ambiguous in the following particulars, to wit: It is therein alleged that neither the said superior court nor said supreme court decided or determined the question whether sections 617 and 672 of the Civil Code of California, as applied to the claim of the defendant to take said real estate in California by de-
scent, were or were not in violation of section 10 of article I of
46 the Constitution of the United States; nor whether said Florence could take said real estate by descent, in the absence of

a treaty between the United States and Great Britain enabling her to take said real estate; nor whether said courts were or were not without jurisdiction to adjudge said real estate to her upon her claim as the heir of said Thomas H. Blythe, in the absence of a treaty between the United States and Great Britain enabling her to take said real estate by succession; nor whether any statute passed by the State of California, purporting to enable a non-resident, illegitimate alien British subject to take real estate by succession is not in violation of and repugnant to section 10 of article I of the Constitution of the United States; and yet, said complaint alleges and sets forth what is in conflict with the said statements by alleging the aforesaid proceeding under section 1664 mentioned in said complaint and the adjudication of said superior court in said proceeding determining and adjudging that said Thomas H. Blythe in his lifetime had adopted said Florence as his daughter under and by virtue of the provisions of said section 230 of said Civil Code, which necessarily included an adjudication that said superior court had juris-
47 diction to thus determine and adjudge that she had been thus adopted, and necessarily included all of the aforesaid questions which said complaint thus states were not decided nor determined by said superior court nor by said supreme court.

IX.

Said complaint is also ambiguous in the following particulars, to wit: Because it is therein alleged that the claim to said real property set up by said defendant of a right by her to inherit, hold, possess, or enjoy the same, is groundless, fictitious, absolutely false, unfounded in fact or law, and without any meritorious right whatever, and yet said complaint alleges and sets forth what is in conflict with said statements by alleging the proceedings therein stated to have been had under said section 1664 of the Code of Civil Procedure, and the determination and adjudication of said superior court in said proceedings that said Thomas H. Blythe in his lifetime had adopted said defendant as his daughter under and by virtue of the provisions of said section 230 of the Civil Code, and that said judgment had been affirmed by the supreme court of this State; and from the allegations of said complaint it appears that said judgment
48 continues in full force and has become final, and that the heirship of said defendant to the estate of Thomas H. Blythe, deceased, was thus established and confirmed; and said complaint further alleges and sets forth what is in conflict with the aforesaid statements therein, that the claim of said defendant to said real estate is groundless and unfounded, by stating the proceedings mentioned in said complaint under the petition for distribution presented by said defendant to said superior court, and the adjudication thereunder that said defendant was entitled to have the whole of the said estate of said Thomas H. Blythe, deceased, distributed to her; and it appears from the statements in said complaint that the said adjudication is in full force and is conclusive of the title of said defendant in fee to all of said real estate.

X.

Said complaint is unintelligible in the particulars mentioned in paragraph VI hereof.

XI.

Said complaint is unintelligible in the particulars mentioned in paragraph VII hereof.

49

XII.

Said complaint is unintelligible in the particulars mentioned in paragraph VIII hereof.

XIII.

Said complaint is unintelligible in the particulars mentioned in paragraph IX hereof.

XIV.

Said complaint is uncertain in the particulars mentioned in paragraph VI hereof.

XV.

Said complaint is uncertain in the particulars mentioned in paragraph VII hereof.

XVI.

Said complaint is uncertain in the particulars mentioned in paragraph VIII hereof.

XVII.

Said complaint is uncertain in the particulars mentioned in paragraph IX hereof.

XVIII.

Said complaint is also uncertain in the following particulars:

50 1st. In stating, that there was a want of jurisdiction in said superior court to adjudge or decree in the aforesaid special proceeding mentioned in said complaint under said section 1664 that said defendant was the heir to the said real estate or capable of taking the same by descent; without stating in said complaint wherein there was a want of jurisdiction in said court to thus adjudge or decree.

2nd. In alleging in said complaint, that there was a want of jurisdiction in said superior court to determine that said defendant was or could be an heir to the real estate of said Thomas H. Blythe in California, or capable of inheriting the same; without stating in said complaint wherein there was a want of jurisdiction in said court to thus determine.

3rd. In stating in said complaint, "Yet said court did, without jurisdiction, decree said Florence to be the owner of said real estate by succession;" without stating wherein said court was without jurisdiction to thus decree.

4th. In stating in said complaint, that it was made plainly to appear to said supreme court in the record on the appeal from the

decree of said superior court in said proceeding under said
51 section 1664, that neither said superior court, nor said supreme court, had jurisdiction to decide the matter in controversy, involving the title and ownership to said real estate in said special proceeding in favor of said defendant; without stating what was made to appear to said supreme court in said record to show that neither said superior court, nor said supreme court, had jurisdiction to decide the matter in controversy involving the defendant's title and ownership to said real estate in said special proceeding in favor of said defendant.

5th. In stating in said complaint, that said supreme court, without jurisdiction, affirmed the judgment of said superior court in said special proceeding; without stating in said complaint wherein said supreme court was without jurisdiction to affirm said judgment.

6th. In stating in said complaint, that the decision of said supreme court affirming the judgment of said superior court in said proceeding under section 1664 is null and void for want of jurisdiction in said court; without stating wherein said supreme court was without jurisdiction to affirm said judgment.

7th. In stating in said complaint, that it was the plain duty
52 of said superior court to dismiss the petition of said defendant in so far as the real estate of said Thomas H. Blythe was involved for want of jurisdiction in said court to distribute to her any part or share of said real estate; without stating in said complaint wherein said superior court did not have jurisdiction to distribute to her said real estate.

8th. In stating in said complaint, that said court had no jurisdiction to render the judgment and the affirmance of the judgment in the proceeding of Blythe *vs.* Ayres *et al.*, mentioned in said complaint; without stating why the said courts did not have such jurisdiction.

9th. In stating in said complaint, that the supreme court did not have jurisdiction to affirm the decree and judgment of the superior court purporting to distribute the said real estate to this defendant and ordering the distribution of the same to her, and in stating that the said supreme court, without any right, power or jurisdiction so to do, did make a decision purporting to affirm said judgment and decree; without stating in said complaint why said supreme court did not have jurisdiction to affirm said decree and judgment.

Wherefore said defendant prays judgment that this demur-
53 rer be sustained, and that the plaintiff take nothing by this action, and for her costs and disbursements herein.

WM. H. H. HART,
Attorney for Defendant.

GARBER, BOALT & BISHOP,
W. W. FOOTE,
AYLETT R. COTTON, *Of Counsel.*

(Endorsed:) Service of the within and receipt of a copy thereof is hereby admitted this 28th day of February, A. D. 1898. S. W. & E. B. Holladay, attorneys for plaintiff. Filed 4.50 p. m., March 1, 1898. C. F. Curry, clerk, by T. C. Maher, deputy clerk.

Judgment.

(Title of Court and Cause.)

In open court, March 4th, 1898. No. 63019.

The demurrer of the defendant to the plaintiff's complaint herein coming on regularly for hearing on this 4th day of March, A. D. 1898, said defendant appearing by Wm. H. H. Hart, Esq.,
54 her attorney, and A. R. Cotton, of counsel, and the plaintiff appearing, — E. B. Holladay, his attorney, and L. D. McKisick, Esq., of counsel, and the court having heard the demurrer and argument of counsel, and the demurrer being submitted to the court for decision, and the court being fully advised in the premises, it is considered, ordered and adjudged by the court that the said demurrer be and the same is hereby sustained, and it is ordered and adjudged by the court that the defendant have judgment against said plaintiff upon the merits of this action and that judgment be entered accordingly.

Wherefore by virtue of the law and by reason of the premises aforesaid, it is ordered, adjudged and decreed that Boswell M. Blythe, plaintiff, do take nothing by this his said action as against Florence Hinckley, defendant, but that judgment be and the same is hereby entered against said plaintiff and in favor of said defendant for her costs incurred herein, amounting to the sum of $2.50.

Judgment recorded, March 8, 1898, Book 38, page 648.

55 *Notice of Appeal.*

(Title of Court and Cause.)

You will please take notice that the plaintiff in the above-entitled action hereby appeals to the supreme court of the State of California from the judgment therein entered in said superior court on the 8th day of March, 1898, in favor of the defendant in said action and against said plaintiff and from the whole thereof.

S. W. & E. B. HOLLADAY,
Attorneys for Plaintiff.

Dated June 6, 1898.

To the clerk of said court and to defendant, Florence Hinckley, and to Wm. H. H. Hart, Esq., her attorney.

Service of a copy of the foregoing notice of appeal is admitted this 6th day of June, 1898.

WM. H. H. HART,
Attorney for Defendant, Florence Hinckley.

(Endorsed:) Filed 4.35 p. m. June 6, 1898. C. F. Curry, clerk, by Geo. W. Lee, deputy clerk.

56 (Title of Court and Cause.)

Certificate.

It is hereby certified that the foregoing transcript is correct; it contains true and correct copies of the complaint, the demurrer of defendant thereto, the judgment entered on said demurrer and plaintiff's notice of appeal from said judgment, as they are on file herein in the office of the county clerk of San Francisco; and that a sufficient undertaking on appeal in due form of law for costs, in the sum of $300, was properly filed in said cause.

WM. H. H. HART,
Attorney for Respondent.
S. W. AND E. B. HOLLADAY,
Attorney- for Appellant.

AYLETT R. COTTON,
Of Counsel for Respondent.

Dated —— —, 1898.

57 Due service of the within is hereby admitted this 2d day of July, 1898.

WM. H. H. HART,
Att'y for Resp.

AYLETT R. COTTON,
Of Counsel for Respondent.

58 In the Supreme Court of the State of California, Department Two.

BOSWELL M. BLYTHE, Plaintiff and Appellant, *vs.* FLORENCE BLYTHE HINCKLEY, Defendant and Respondent.	S. F. No. 1548. On Appeal from the Superior Court of the City and County of San Francisco.

Filed January 4, 1900.

Department Two.

BOSWELL M. BLYTHE, Plaintiff and Appellant, *vs.* FLORENCE BLYTHE HINCKLEY, Defendant and Respondent.	S. F. No. 1548.

The purpose of this action was to recover from defendant certain land in the city and county of San Francisco. Plaintiff claims as an heir-at-law of Thomas H. Blythe, deceased. Without setting forth in detail the matters charged, it will be sufficient to say that the complaint pleads the proceedings and the judgments of the superior and supreme courts of this State, under which it was decreed that Thomas H. Blythe had instituted Florence Blythe, now Florence Blythe Hinckley, as heir, and the subsequent decree of the court distributing the property in question to her. The facts and

the judgment to which reference has thus been made will be found at length in the action entitled Florence Blythe *vs.* Abbie Ayres *et al.*, 96 Cal., 532. It is contended by this bill that the judgments of the superior court and of this court so decreeing are absolutely void, and that plaintiff as one of the heirs-at-law of Thomas H. Blythe, deceased, should have judgment to that effect. A general demurrer was sustained to this bill, and plaintiff declining to amend appeals from the judgment thereupon entered against him.

In support of the complaint it is urged that Florence Blythe at the time of descent cast was an alien and British subject, who had never been within the jurisdiction of the United States or of the State of California, and that the State of California had, and has, no power to extend to such non-resident aliens the right to inherit real estate within its territorial domain in the absence of a treaty provision to that effect between the United States and the country of such alien; that sections 230 and 1387 of the Civil Code, as applied to the case of such a non-resident alien, are without effect; that section 671 of the Civil Code is in violation of section 10 of article 1 of the Constitution of the United States, which declares that "No State shall enter into any treaty, alliance or confederation," and is in violation of section 17, of article I, of the constitution of the State of California, which (it is argued) limits the right of succession to the classes designated in the following language:

"Foreigners of the white race or of African descent eligible to become citizens of the United States under the naturalization laws thereof, while *bona fide* residents of this State, shall have the same rights in respect to the acquisition, possession, enjoyment, transmission and inheritance of property as native-born citizens."

It has been affirmed and reaffirmed in the decisions of the Supreme Court of the United States that the question of the possession, enjoyment and inheritance of property is the proper subject-matter of treaty by resident or non-resident aliens. Thus, to employ but one quotation, in Geofroy *vs.* Riggs, 133 U. S., 258, it is said (p. 266): "That the treaty power of the United States extends to all proper subjects of negotiation between our Government and the governments of other nations is clear. It is also clear that the protection which should be afforded to the citizens of one country owning property in another, and the manner in which that property may be transferred, devised or inherited, are fitting subjects for such negotiation and of regulation by mutual stipulations between the two countries." This principle was early recognized in this State in the case of People *vs.* Gerke, 5 Cal., 381.

It need scarcely be said that at common law an alien was not of inheritable blood, and that disability still attaches in this State, saving where it has been removed by express law. By section 671 of our Civil Code it is declared that "any person, whether citizen or alien, may take, hold and dispose of property, real or personal, within this State." Here is an express removal of the disability to which we have referred, and if it be a valid law it is determinative of appellant's contention. It is conceded that the treaties between Great Britain and this country are silent upon the subject. We are

not then confronted with the case of a State law in declared conflict with the provision of a treaty, in which instances it is of course uniformly held that the treaty is the paramount law. Opel *vs.* Shoup, 100 Ia., 407; Hauenstein *vs.* Lynham, 100 U. S., 483; Geofroy *vs.* Riggs, 133 U. S., 258; Orr *vs.* Hodgdon, 4 Wheat., 453. But by appellant it is insisted that the very silence of our treaties with Great Britain upon the question is the equivalent of an express denial to its subjects of the right to inherit within our Republic, and that therefore a conflict arises and section 671 becomes void as an illegal attempt to encroach upon the treaty-making power of the General Government. But this view, we think, finds little favor either in principle or in authority. A State has the undoubted right to regulate the tenure and disposition of the real property within its boundaries, and such regulations always have been and should be held valid except where they conflict with the express provisions of a higher law. Thus in U. S. *vs.* Fox, 94 U. S., 315, it is said: "The power of the State to regulate the tenure of real property within her limits, and the modes of its acquisition and transfer, and the rules of its descent, and the extent to which a testamentary disposition of it may be exercised by its owners, is undoubted. It is an established rule of law everywhere recognized, arising from the necessity of the case, that the disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government within whose jurisdiction the property is situated." See also Hutchinson Investment Co. *vs.* Caldwell, 152 U. S., 65; Mager *vs.* Grima, 8 How., 490; Beard *vs.* Rowan, 9 Pet., 301. And this right to regulate the tenure and disposition of real property within its boundaries is not only in the State, but it is primarily in the State (Hauenstein *vs.* Lynham, 100 U. S., 483), and is subject only to such control as may be exercised by the General Government within its treaty-making power. Therefore, it will be found that the Supreme Court of the United States nowhere declares State laws upon the subject to be void as an invasion of the treaty-making power, but uniformly upholds the laws when not in conflict with the express provisions of a treaty, as in the case of Henerick *vs.* Parrick, 119 U. S., 156, where the question was of the right of an alien subject of Great Britain to inherit, and the court held that the laws of Texas governing the rights of aliens to inherit property in that State were of controlling force. And even in those cases where there is a conflict between the provisions of the State law and those of the treaty, it is not held that the State laws are void as an unwarranted interference with or encroachment upon the powers of the Federal Government. It is held merely that such laws in so far as they conflict with the treaty provisions are suspended during the life of the treaty. Thus in Jeofroy *vs.* Riggs, 133 U. S., 258, the question being as to the effect of the provisions of a treaty with France upon the laws of Maryland which were in operation in the District of Columbia, it is said: "The treaty, being part of the supreme law of the land, controls the statute and common law of Maryland whenever it differs from them. * * * The treaty expired by its own limitation in eight years pursuant to an article in-

serted by the Senate. During its continuance citizens of France could take property in the District of Columbia by inheritance from citizens of the United States, but after its expiration that right was limited as provided by the statute and common law of Maryland."

It is concluded, therefore, upon this proposition that the sections of our Civil Code which have been under consideration are not in conflict with the provisions of any treaty between the United States and Great Britain, and are not an invasion of the treaty-making powers of the United States Government.

The argument that section 671 is inoperative to cast descent upon defendant, for the reason that the laws of the State can have no extraterritorial force, seems to be fully answered by the language of this court in State *vs.* Smith, 70 Cal., 153, where it is said, discussing this very section: "It is suggested that, inasmuch as laws can have no extraterritorial operation, the legislature has no power to provide for succession by foreigners who had never been residents, but the section of the code provides a rule with respect to property within the State. It confers a right to be enjoyed within the jurisdiction."

The further contention that section 671 of the Civil Code is void because in conflict with section 17 of article I of the constitution of the State of California rests for its support upon the argument that the language of the constitution is a limitation upon the power of the legislature. But to give it such an interpretation would be to do violence to fundamental rules of construction. By section 17 foreigners of the indicated classes may not be deprived of the rights which the constitution secures to them. But there is in this no withdrawal from the legislature of its general powers, nor any limitation upon its right to extend similar privileges to other foreigners or aliens. California *vs.* Rogers, 13 Cal., 160.

It follows from the foregoing that the order of court sustaining defendant's demurrer was properly made, and the judgment appealed from is therefore affirmed.

HENSHAW, *J.*

We concur:

TEMPLE, *J.*

McFARLAND, *J.*

I, Geo. W. Root, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of an opinion filed Jan'y 4th, 1900, in the above-entitled cause, as shown by the records of my office.

Witness my hand and the seal of the court, this 6th day of July, A. D. 1900.

[Seal Supreme Court of California.]

GEO. W. ROOT, *Clerk.*

By J. J. DUNCAN, *Deputy.*

59 Copy.

In the Supreme Court of the State of California, Dept. Two.

BOSWELL M. BLYTHE, Appellant, *vs.* FLORENCE HINCKLEY, Respondent. } S. F. No. 1548. On Appeal from the Superior Court in and for the City and County of San Francisco.

JULY 4TH, 1900.

And now, at this day, this cause being called and having been heretofore submitted and taken under advisement by the court, and all and singular the law and premises being by the court here seen, heard, understood, and fully considered, the opinion of the court herein is delivered by Henshaw, J.

We concur: Temple, J.; McFarland, J.

Whereupon it is now considered and ordered, adjudged, and decreed by the court here that the judgment of the superior court in and for the city and county of San Francisco in the above-entitled cause be, and the same is hereby, affirmed.

Remittitur issued Feb'y 5th, 1900.

I, Geo. W. Root, clerk of the supreme court of the State of California, do hereby certify that the preceding and annexed is a true and correct copy of a judgment as shown by the records of my office.

Witness my hand and the seal of the court this 7th day of July, A. D. 1900.

GEO. W. ROOT, *Clerk*,
By J. J. DUNCAN, *Deputy*.

60 Copy.

In the Supreme Court of the State of California, Dept. Two.

BOSWELL M. BLYTHE *vs.* FLORENCE HINCKLEY, Resp. } S. F. No. 1548. On Appeal from the Superior Court in and for the City and County of San Francisco.

And now, at this day, this cause being called and having been heretofore submitted and taken under advisement, and all and singular the law and premises having been fully considered, the opinion of the court herein is delivered by Henshaw, J.

We concur: Temple, J.; McFarland, J.

Whereupon it is adjudged and decreed by the court that the judgment of the superior court in and for the city and county of San Francisco in the above-entitled cause be, and the same is hereby, affirmed.

I, Geo. W. Root, clerk of the supreme court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above-entitled cause on the 4th day of Jan'y, 1900, and now remaining of record in my office.

Witness my hand and the seal of the court, affixed at my office, this 5th day of Feb'y, A. D. 1900.

[SEAL.]

GEO. W. ROOT, *Clerk*,
By J. J. DUNCAN, *Deputy*.

61 In the Supreme Court of the State of California.

BOSWELL M. BLYTHE, Plaintiff and Appellant,
vs.
FLORENCE HINCKLEY, Defendant and Respondent. } S. F. No. 1548.

Petition for Writ of Error.

To the Hon. Chief Justice of California:

Boswell M. Blythe, plaintiff and appellant in the above-entitled cause, feeling himself aggrieved by the final judgment of this court made and entered herein on the 4th day of January, 1900, comes now, by S. W. Holladay and E. B. Holladay, his attorneys, and asks for an order allowing him, said plaintiff, to prosecute a writ of error, and allowing a writ of error to issue out of the Supreme Court of the United States addressed to the supreme court of California, whereby said cause may be removed out of the supreme court of California and into the Supreme Court of the United States, under and according to the laws of the United States in that behalf made and provided, and fixing the amount of security for costs which plaintiff shall give and furnish upon said writ of error.

62 The suit has gone to final judgment in the supreme court of California, the highest court of the State in which a decision in the suit could be had.

In this suit there is drawn in question the validity of a statute of California (*i. e.*, section 671 of the Civil Code) reading as follows:

"Any person, whether citizen or alien, may take hold, and dispose of property, real or personal, within this State," on the ground that said statute, in its application to this defendant, a non-resident alien, is repugnant to section 10 of article 1 of the Constitution of the United States, reading as follows:

"No State shall enter into any treaty, alliance, or confederation. No State shall, without the consent of Congress * * * enter into any agreement or compact with another State or with a foreign power,"

on the ground that it is repugnant to all the treaties which existed between the United States and Great Britain at the time of the death of Thomas H. Blythe and descent cast, or which now exist.

And on the ground that it is repugnant to all existing treaties between the United States and foreign countries with respect to inheritance of property in this country by subjects or citizens of such foreign countries while remaining at home, and on the ground that it is repugnant to section 1978 of the Revised Statutes of the United States.

63 Petitioner alleging that the State of California had no power to enact said statute, section 671 of the Civil Code, in its application to aliens, and that defendant herein, as a non-resident alien at the time of descent cast, could not be and was not, by the State of California or said statute, authorized to take by inheritance the real property involved in this suit, and did not in law take it by virtue of said statute or at all.

In this suit there is drawn in question also the validity of sections 230 and 1387 of the Civil Code of California and section 1664 of the Code of Civil Procedure of California, as they have been construed in this suit by the courts of California, on the ground that, as so construed, they are respectively repugnant to the said provisions of section 10 of article 1 of the Constitution of the United States.

That, as so construed, they are respectively repugnant to the treaties existing between Great Britain and the United States, and repugnant to all the treaties between the United States and foreign countries.

That, as so construed, they are respectively in conflict with the laws of the United States, viz., section 1978 of the Revised Statutes of the United States.

Petitioner alleging that the State of California had no power to enact said statutes, as thus construed, in their application to aliens, and that defendant herein could not be and was not by California or said statutes authorized to take by inheritance the real property involved in this suit.

The original complaint herein, filed by this petitioner in the trial court, drew in question the validity of said State statutes,
64 and the power of the State to enact them, and the right of defendant to take under them; all on the ground that they are respectively repugnant to the Constitution of the United States and section 10 of article 1 thereof, and on the ground that they are repugnant to all the existing treaties of the United States, including the treaties between the United States and Great Britain, and on the ground that they are repugnant to section 1978 of the Revised Statutes of the United States.

The decision of the trial court and the decision of the supreme court of California were both in favor of the validity of said State statutes and of defendant's claim under them. No other question was decided.

The question of the repugnance of said statutes with the Constitution, laws, and treaties of the United States not only arose by clear and necessary intendment, but it was distinctly set out on the face of the complaint, so that it was necessarily involved in the case itself.

And whereas the defendant was at the time of descent cast a British subject and an illegitimate minor child residing and being in England, with the government of which country the United States had not made any treaty permitting British subjects to inherit land in the United States; and whereas the only claim made by said defendant to said real property was that she, while such British subject, in England had inherited it under said California statutes, the validity of which is drawn in question herein:

65 Therefore the supreme court of California could not have arrived at a decision in said case without deciding the question whether said statutes were or were not repugnant to the Constitution, laws, and treaties of the United States.

And said supreme court of California did decide herein the Federal question raised in said complaint. Said court decided that said

statutes were not nor was any of them repugnant to the Constitution, laws, or treaties of the United States, for whereas said court (in its opinion filed herein) did concede that the subject of extending to aliens the right to inherit property in the United States is the proper matter for treaty regulation, and is within the domain of foreign relations, yet as there was no treaty between the United States and Great Britain granting to British subjects the right to take property by inheritance in the United States, or in any way changing the old common-law disability, that each State had the right meantime to exercise that function and grant rights of inheritance to suit itself.

This was a decision that said words of the Constitution of the United States here relied on do not exclude the States from exercising to this extent the functions of the treaty-making power of the General Government, and do not exclusively confine to the General Government the right to transact all such matters as belong to the department of foreign relations; therefore the case involves a Federal question.

Wherefore this plaintiff, Boswell M. Blythe, prays that a writ of error be allowed to him.

66 And he prays that the Supreme Court of the United States upon an examination of the entire record will reverse the judgment herein and order a judgment in favor of plaintiff, and for costs.

S. W. HOLLADAY,
E. BURKE HOLLADAY,
Attorneys for Petitioner, Plaintiff in Error.

A writ of error as prayed is hereby allowed.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

July 5th, 1900.

The amount of bond is fixed at $500.00.

BEATTY, *C. J.*

67 [Endorsed:] S. F. 1548. In the supreme court of the State of California. Petition for writ of error. Filed Jul-6, 1900. Geo. W. Root, clerk, by J. J. Duncan, deputy.

68 In the Supreme Court of the State of California.

BOSWELL M. BLYTHE, Plaintiff and Appellant,
vs.
FLORENCE HINCKLEY, Defendant and Respondent.
} S. F. No. 1548.

Assignment of Errors by Boswell M. Blythe on His Petition for Writ of Error.

I.

The court erred in deciding that section 671 of the Civil Code of California, reading:

"Any person, whether citizen or alien may take, hold and dispose

of property, real and personal within this State," is an express removal of the common-law disability of an alien to inherit land in this State, and that said section is not, in that respect, repugnant to the provisions of section 10 of article 1 of the Constitution of the United States, reading:

"No State shall enter into any treaty alliance or confederation * * *. No State shall without the consent of Congress * * * enter into any agreement or compact with a foreign power."

II.

The court erred in deciding that California had the power to enact said section 671 in its application to defendant or to remove
69 the common-law disability of an alien as to the inheritance of land in California in the absence of a treaty or otherwise in the face of the inhibition contained in said section of the Constitution.

The court erred in deciding that the State of California had any power or jurisdiction to qualify a non-resident alien to take by inheritance real estate in California.

III.

The court erred in deciding that said defendant, Florence (who was, at the time of the death of Thomas H. Blythe and descent of his estate cast, a subject of Queen Victoria and an illegitimate minor child residing and domiciled in England), did or could take the land in California, here involved, by succession under and by the force of said section 671 of the Civil Code of California, in spite of said provisions of section 10 of article 1 of the constitution of the United States.

IV.

Said court erred in deciding that defendant did take by inheritance the land here in controversy in California solely under said section 671 of the Civil Code of California, notwithstanding the court's opinion that the regulation of the descent of real property to aliens was and is within the treaty-making power of the United States.

The court erred in deciding that the very silence of the treaties existing between the United States and Great Britain upon the matter of giving to British subjects residing in England the right
70 to inherit land in the United States is not equivalent to an expressed denial to British subjects of the right to inherit land within the United States.

The court erred in holding that defendant, a British subject, could take land by inheritance in California in the absence of a treaty between the United States and Great Britain enabling her so to do.

The court erred in deciding that there is no conflict arising between the provision contained in section 671 of the Civil Code, permitting defendant, an alien, to inherit land in California, and section 10 of article 1 of the Constitution of the United States, and that said

section 671, *quo ad* that matter, is not void as an illegal attempt to encroach upon the exclusive prerogative of the Federal Government to manage all its foreign relations.

The court erred in deciding that said section 671 of the Civil Code, so far as it regulates the descent of real property to aliens, does not encroach upon the treaty-making power of the United States.

The court erred in deciding that said section 671 of the Civil Code of California, in so far as it provides for the descent of real property to aliens, is not repugnant to that provision of section 10, article 1, of the Constitution of the United States which forbids the States to enter into any agreement or compact with a foreign power without the consent of Congress.

V.

71 The court erred in deciding that said section 671 of the Civil Code of California is not repugnant to all of the existing treaties concluded between the United States and Great Britain, because in them the United States did not extend to British subjects (but refrained from extending to them) the privilege of inheriting land within the United States.

Said court erred in deciding that said section 671 of the Civil Code of California is not repugnant to section 1978 of the Revised Statutes of the United States, for while said section of the laws of the United States insures to all citizens of the United States the same right in every State and Territory as is enjoyed by the white citizens thereof to inherit real property, yet said section 671 of the Civil Code of California, as construed by the court, neutralizes said section 1978 of the U. S. Revised Statutes in California, by giving that same right to inherit land, not only to all citizens of the United States, but to all aliens the world over, and as applied in this case said section of the California code extended that right of inheritance to an alien British subject, residing in England, who was also an illegitimate child, to whom even English laws did not extend the right of inheritance.

The court erred in deciding that section 230 of the Civil Code of California, reading:

72 "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such, with the consent of his wife, if he is married, into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth," in its application to defendant Florence (an English subject and an illegitimate minor child residing in England until after the time of descent cast) and with respect to her claim to have been adopted under it, and therefore to have inherited and taken by succession, under said section, the land here involved—is not in conflict with the provisions of any treaty then existing between the United States and Great Britain, and is not an invasion of the treaty-making powers of the United States Govern-

ment, and is not repugnant to section 10 of article 1 of the Constitution of the United States.

The court erred in deciding that section 1387 of the Civil Code of California, reading:

"Every illegitimate child is an heir of the person who, in writing, signed in the presence of a competent witness acknowledges himself to be the father of such child; and in all cases of his mother; and inherits his or her estate, in whole or in part as the case may be in the same manner as if he were born in lawful wedlock;" or any action of Thomas H. Blythe under it relating to her operated upon defendant Florence (an English subject and an illegitimate minor child residing in England until after the time of descent cast) and is not repugnant to section 10 of article 1 of the Constitution of the United States, and that, as applied to defendant by the court, said section was not an encroachment upon the diplomatic juris-
73 diction of the Federal Government, and is not in conflict with the provisions of any treaty then existing between the United States and Great Britain, and is not an invasion of the treaty-making power of the United States Government.

The court erred in deciding that section- 230 and 1387 of the Civil Code of California above set forth operated to clothe defendant with capacity to take the land here in controversy by inheritance.

The court erred in deciding that the adoption of defendant by Thomas H. Blythe under section 230 of the Civil Code or the institution of defendant as an heir by Thomas H. Blythe under section 1387 of the Civil Code of California was the legal equivalent of a treaty enabling her to take said land by inheritance.

The court erred in deciding that sections 230 and 1387 of the Civil Code of California operated within the field of foreign relations of the United States Government and outside of the geographical boundaries of the State of California, and as so operating were not repugnant to the Constitution of the United States.

The court erred in deciding that said sections 230 and 1387 of the Civil Code of California were not limited in their terms and their constitutional operation to the geographical limits and to the citizens of California.

The court erred in deciding that section 1664 of the Code of Civil Procedure of California enabled defendant, in lieu of a treaty,
74 to institute a suit in any court of California to recover land under claim of succession thereto, and that said section, as construed by the supreme court and with regard to defendant's claim made thereunder, is not repugnant to said provisions of section 10 of article 1 of the Constitution of the United States, and is not repugnant to all the existing treaties of the United States with Great Britain, and is not repugnant to section 1789 of the Revised Statutes of the United States.

The court erred in deciding that the superior court of California, sitting in probate or otherwise, had any jurisdiction to entertain the claim of said defendant to the real property involved.

The court erred in holding that any law of California clothed

defendant with any right to inherit land in California or to sue to recover land under a claim thereto by inheritance.

The court erred in deciding that all the alleged adjudications in favor of defendant by the courts of California were not void for want of jurisdiction in the State of California to bestow upon her any right to the land.

The court erred in deciding that the State of California could and did clothe defendant, a non-resident alien, with the fee-simple title to land by succession (thereby giving to her the right to live thereon forever), in the face of the conceded power of the United States to remove and exclude defendant from the United States without assigning any reason therefor.

Said court erred in giving judgment herein against this
75 plaintiff and in favor of defendant.

Said court erred in not giving judgment in favor of this plaintiff and against defendant.

Wherefore plaintiff, this petitioner, prays the judgment of the Hon. Supreme Court of the United States reversing the judgment herein, and for costs.

And since the infirmity of alienage existing in defendant's case is a matter which cannot be denied or avoided by her, but must be fatal to her claims, if plaintiff's constitutional objection is well taken, plaintiff asks that with a reversal of the judgment this court make an order directing the court below to enter a final judgment for the plaintiff.

S. W. HOLLADAY,
E. BURKE HOLLADAY,
Attorneys for Plaintiff in Error.

76 [Endorsed:] S. F. 1548. In the supreme court of the State of California. Assignment of errors. Filed Jul-6, 1900. Geo. W. Root, clerk, by J J. Duncan, deputy.

77 In the Supreme Court of the State of California.

BOSWELL M. BLYTHE, Plaintiff and Appellant,
vs.
FLORENCE HINCKLEY, Defendant and Respondent. } S. F. No. 1548.

Whereas Boswell M. Blythe, the plaintiff in the above-entitled suit, is about to apply for a writ of error from the Supreme Court of the United States, directed to the supreme court of California, to reverse the judgment of said last-named court which was given and made and entered therein on January 4th, 1900, in favor of defendant, Florence Hinckley, and against plaintiff, Boswell M. Blythe:

Now, therefore, in consideration of the premises and of such writ of error, the undersigned, John Townsley and D. P. Smart, do hereby undertake and promise on the part of the plaintiff in error, Boswell M. Blythe, that the said plaintiff in error shall prosecute his said writ of error to effect, and if he fail to make his plea good shall answer and pay to said Florence Hinckley, defendant in error,
78 all costs that may be awarded against him on the writ of error or on a dismissal thereof, not exceeding the sum of five

hundred dollars, to which amount they acknowledge themselves jointly and severally bound.

BOSWELL M. BLYTHE.
JOHN TOWNSLEY.
D. P. SMART.

STATE OF CALIFORNIA, } ss:
County of Los Angeles, }

John Townsley and D. P. Smart, the persons named in and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself, says that he is a resident and freeholder within said State of California and is worth the amount specified in said undertaking as the penalty thereof over and above all his just liabilities, exclusive of property exempt from execution.

JOHN TOWNSLEY.
D. P. SMART.

Subscribed and sworn to before me this 19 day of June, A. D. 1900.

[NOTARIAL SEAL.] J. H. ARDIS.

The within bond is hereby approved.

W. H. BEATTY,
Chief Justice of the Supreme Court of California.

July 5th, 1900.

(Copy.)

[Endorsed:] S. F. 1548. In the supreme court of the State of California. Copy of bond. Filed Jul- 6, 1900. Geo. W. Root, clerk, by J. J. Duncan, deputy.

79 UNITED STATES OF AMERICA, ss:

The President of the United States to Florence Hinckley (now Florence Moore), Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at Washington, District of Columbia, within 60 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of California, wherein Boswell M. Blythe is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable W. H. Beatty, chief justice of the supreme court of California, this 6th day of July, 1900.

W. H. BEATTY,
Chief Justice of the Supreme Court of the State of California.

Service of the above admitted without prejudice this 6th day of July, A. D. 1900.

W. H. H. HART,
Att'y for Florence B. Hinckley, Def't in Error.

[Endorsed:] S. F. 1548. In the supreme court of the State of California. Citation and proof of service. Filed Jul- 6, 1900. Geo. W. Root, clerk, by J. J. Duncan, deputy.

80 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the justices of the supreme court of the State of California, Greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said supreme court, before you, between Boswell M. Blythe, plaintiff in error, and Florence Hinckley, defendant in error (S. F. No. 1548), a manifest error hath happened, to the great damage of the said Boswell M. Blythe, as by his complaint appears, and it being fit that the error, if any there hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at the city of Washington, in the District of Columbia, on the 3rd day of September next, in the said Supreme Court of the United States, to be there and then held, that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States of America, this 5th day of July, in the year of our Lord one thousand nine hundred, and of the Independence of the United States the 125th.

[Seal U. S. Circuit Court, Northern Dist. Cal.]

SOUTHARD HOFFMAN,
Clerk United States Circuit Court, Northern District of California.

The above writ of error is hereby allowed.

W. H. BEATTY,
Chief Justice of California.

July 5th, 1900.

[Endorsed:] S. F. 1548. In the supreme court of the State of California. Writ of error. Filed Jul- 6, 1900. Geo. W. Root, clerk, by J. J. Duncan, deputy.

81 In obedience to the mandate of writ of error from the Supreme Court of the United States, attested on the 5th day of July, 1900—

I, Geo. W. Root, clerk of the supreme court of California, hereby certify that the printed pamphlet hereto attached, containing 56 printed pages within its covers, is a full, true, and correct copy of the transcript on appeal in the case of Boswell M. Blythe, plaintiff and appellant, *vs.* Florence Hinckley, defendant and respondent, as the same is on file in this office, therein numbered S. F. 1548; that to said copy of the record or transcript on appeal I have attached a full, true, and correct copy of the opinion rendered by the supreme court of California, January 4, 1900, on said appeal;

Also a full, true, and correct copy of the final judgment of this court made upon said appeal affirming the judgment;

Also a full, true, and correct copy of the remittitur issued to the superior court of the city and county of San Francisco after the disposition of said appeal;

And whereas said documents and papers compose an authenticated transcript of the entire record of said cause as it exists among the records of this office; therefore I do now annex to and return with said writ of error said authenticated transcript of the record, and I also annex to and return with said writ of error the

82 petition of said Boswell M. Blythe for a writ of error, with an endorsement thereon by the chief justice of the supreme court of California allowing the writ to issue, dated July 5, 1900, and filed in this office July 6, 1900;

And also the assignment of errors and prayer for reversal by said plaintiff in error, filed in this office July 6, 1900;

And also a true copy of the bond for costs taken and approved by the chief justice and bearing his approval endorsed thereon, filed in this office July 6, 1900, and also the citation, signed by the chief justice of this court, and bearing the admission of service of the attorney for the adverse party.

[Seal Supreme Court of California.]

GEO. W. ROOT,
Clerk of the Supreme Court of the State of California,
By J. J. DUNCAN,
Deputy Clerk.

[Ten-cent U. S. internal-revenue stamp, canceled.]

Endorsed on cover: File No., 17,832. California supreme court. Term No., 347. Boswell M. Blythe, plaintiff in error, *vs.* Florence Hinckley. Filed July 16th, 1900.